Iowa Attorney General
Tom Miller

2004 Criminal Legislative Package

Using the law to serve and protect the people of Iowa.

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Criminal Law Legislative Proposals

Drug Treatment Initiative

Overview and Need for Drug Treatment Proposal.

With this proposal, Attorney General Tom Miller is challenging the Legislature to increase funding for drug treatment and prevention by $29 million.

Drug treatment is the most important thing Iowa can do now to stem the state's methamphetamine problem and fight all drug-related crime. There is an overwhelming linkage between drugs and crime. The number one thing Iowa can do to fight crime is fight drugs, and the number one thing Iowa can do to fight drugs is to do a better job with drug treatment. This is a crucial and cost-effective public safety measure.

Iowa needs a three-prong approach to deal with drugs and crime: prosecution, prevention, and treatment. Overall, Iowa is doing a good job with prosecution, and a pretty good job with prevention, but must do much more work on treatment. Most law enforcement officers and prosecutors agree that prosecution alone will not solve the drug-and-crime problem.

Tough prosecution is very important but it only works in conjunction with effective drug and alcohol treatment. Increasing the money available for substance abuse treatment will reduce crime and make Iowans safer. About four out of five persons in prison have a substance abuse problem. One-third of state prison inmates reported being under the influence of drugs at the time of their offense, according to a federal study

Drug treatment reduces crime more than any other single thing Iowa can do. It's proven to succeed and pay off. A long-term federal study showed that various criminal activity declined sharply among those who completed treatment: selling drugs dropped 78%, shoplifting declined almost 82%, arrests for drug possession dropped 51%, and arrests for any crime dropped 64%. Research by the University of Iowa found that clients reporting "1-3 arrests" decreased by 51% after treatment, and clients reporting "*no* arrests" increased by 51%.

While the top goal of the proposal is public safety, it also will help Iowa's economy and workforce. All Iowans benefit from having more productive employees. The proposal is especially important for tackling Iowa's burgeoning methamphetamine problem. Iowa risks

earning an unflattering reputation as one of the meth capitals of the nation which would damage its image as a clean, healthy state and be terrible for its growth and economic development.

This is the second year that Attorney General Miller has offered a major proposal to strengthen drug treatment and cut crime. It is hard to sell any spending increase when the state faces serious state budget problems, but this program will pay for itself in reduced crime and lower costs for incarceration, prison construction, health care and human services. The economic benefits of substance abuse treatment are much greater than its costs. In fact, drug treatment saves money. Studies show that a dollar spent on drug treatment pays a $4-7 return, mostly in health care savings and increased productivity.

To fund the project, the proposal calls for a 15 cent per pack increase in the cigarette tax. However, it is clearly the Legislature's prerogative to decide how to fund the initiative.

Details of Drug Treatment Proposal

Estimated Funding Outline:

Community Based Treatment	$10 million
Corrections Treatment	$5 million
Drug Courts	$3 million
Diversion Programs	$1 million
Jail Programs	$4 million
Knoxville Program	$4 million
State Training Schools	$390,000
Prevention Grants.	$2 million
Total	$29.39 million

A. Community-based Treatment. (Estimated $10 million increase)

The State Capacities Work Group in 2001 was charged with determining drug treatment capacity in the state and estimating the costs for increased capacity. The most effective scenario recommended by the group called for an increase in both the number of beds and the length of stay. The increased cost for that maximum scenario was $13.9 million. However, based on a judgment that the current system could not absorb that much of an increase in a single year because of workforce issues, the proposal calls for $10 million in

the first year, $10 million in the second, and $15 million by the third year.

B. Prison / Corrections Treatment. (Estimated $5 million increase)

The current estimated expenditure for licensed substance abuse treatment in Iowa prisons is $4.17 million. This provides "residential" level of treatment for about 900 offenders and "outpatient" level of care for about 517 offenders. A $9 million annual budget ($5 million increase) targeted for licensed substance abuse treatment could adequately address the need for treatment within the prisons. An additional $300,000 should be used to reinstate a centralized substance abuse treatment needs assessment process at the Oakdale reception center.

C. Adult and Juvenile Drug Courts. (Estimated $3 million)

Drug Courts for adults, juveniles, or both exist in Des Moines, Sioux City, Marshalltown, Mason City, and in the Fourth Judicial District. The programs are funded primarily through federal grants and are proving to be effective. The state should ensure their continuation and expansion. The Iowa Department of Public Health estimates that placing drug courts to serve 40 adults and 40 juveniles in each of Iowa's eight judicial districts would cost $2.92 million.

Drug Courts are one of the most effective things that can be done because they are at the intersection of the criminal justice system and the treatment system. The Court serves as a particularly effective incentive for requiring treatment. Defendants hear the message that failure to comply will result in sanctions. Because of this feature, judicial cooperation is crucial to success. The Polk County Juvenile Drug Court has a 75% graduation rate and few referrals back to juvenile court the following year. The program costs as little as $14 per day.

D. Diversion to Treatment Pilot Projects. (Estimated $1 million)

The idea of this program is to use a screening tool to identify treatment-ready offenders immediately after arrest so that diversion to treatment occurs prior to the expenditure of legal and correctional resources. Eligible offenders accused of non-violent drug and property crimes would plead guilty enabling them to go to the front of the line for full evaluation, treatment, and CBC supervision.

There are two keys to success: first, the use of a treatment-eligibility screening tool by

pre-trial release interviewers; and second, priorities set by the prosecutors, public defenders, judges, DCS, and treatment programs to "fast-track" the cases.

E. Jail-based Treatment Programs. (Estimated $4 million)

The programs that provide treatment within the jail setting are effective and reliable in part because of the benefits of treating a confined population. This program is currently being implemented in Polk, Woodbury and Scott Counties and has potential for other larger counties. The Polk County program budget is $400,000 and serves 30-40 men and 10 women. Placing such a program in ten of the larger Iowa counties would cost $4 million.

F. Knoxville Secure Drug Treatment Program for Probationers. (Estimated $4 million)

This funding would establish a secure drug treatment program at Knoxville for probationers who also have a substance abuse problem. The program would provide specialized treatment in a secure setting without increasing demands on the prison system.

G. State Training Schools. (Estimated $390,000 increase)

This funding would restore drug treatment programs at the state's two juvenile institutions. The 15-year-old drug treatment program was discontinued because of state budget cuts in 2001. Since then, drug treatment has been available to only a small number of residents. To restore funding to prior levels, the boys training school at Eldora would receive $270,000, and the Iowa Juvenile Home at Toledo would receive $120,000. Eighty-one percent of the youth entering the State Training School arrive with a substance abuse problem.

H. Statewide Comprehensive Prevention Programming Grants. (Estimated $2 million increase)

Additional funding for the Iowa Department of Public Health's Statewide Comprehensive Programming Grant Program will provide an important complement to the increased emphasis on treatment. Under this program, 23 grantees provide drug prevention services to all 99 Iowa counties on a per-capita basis. The programs engage in local alcohol and drug prevention activities, such as working to reduce college binge drinking habits, or

strengthening families to discourage the use of alcohol and drugs. Current state and federal funding for the program is $3.4 million.

Additional information about this proposal can be found at:
www.iowaattorneygeneral.org.

Sexually Violent Predators

Overview

In 1998, the Legislature enacted the Sexually Violent Predator Act, Iowa Code chapter 229A, (Act) based on legislative findings that a civil commitment procedure for the long-term care and treatment of sexually violent predators was necessary in Iowa. Since 1998, about 51 individuals have been committed to treatment as sexually violent predators. Currently, 39 predators are in treatment programs administered by the Department of Human Services at Cherokee.

In January of 2003, the Iowa Supreme Court (Court), in the case of In Re Detention of Gonzales, interpreted the Act in a way that results in the release of individuals who otherwise meet all of the qualifications of a sexually violent predator. It is important to note that the Court based its decision on statutory interpretation, not on Constitutional grounds. (In fact, the language and procedure of a similar statute have been upheld in the United State Supreme Court case of Kansas v. Hendricks.) This proposal would amend the Act to reverse the Iowa Supreme Court's decision.

Current law

Current law provides for civil commitment of sexually violent predators. The civil commitment of this small but dangerous group is for the purpose of encouraging and providing full and meaningful participation of sexually violent predators in treatment programs.

A person is considered a sexually violent predator if three conditions are met and a nexus is established among the three conditions: (1) The person is a present danger to commit a sexually violent offense; (2) The person suffers from a mental disorder; (3) The person has been previously charged with, or convicted of, a sexually violent offense. There are two procedures the State follows to commit a sexually violent predator depending on whether the person is presently confined or not confined.

If the person is not presently confined, then the current law allows a prosecuting attorney or the

Attorney General's Office (Office), if requested by the prosecuting attorney, to file a petition alleging that a person is a sexually violent predator and proceed with a civil commitment proceeding if the person has committed a recent overt act. A recent overt act is defined to mean an act that either has caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

If an individual is presently confined, then the Office has exclusive jurisdiction to bring the commitment proceeding. Prior to the Court's holding in Gonzales, the Office brought civil commitment proceedings against persons who had been confined for any public offense as long as the person otherwise met the definition of a sexually violent predator---i.e. the person had been previously convicted, had a mental abnormality and was likely to offend.

In Gonzales, the person involved had pled guilty to sexual abuse in the second degree in 1981. In 1994, he pled guilty to two counts of indecent contact with a child. His probation was revoked and he was sent to prison and released in 1997. In 1999, he was sentenced to prison for operating a motor vehicle without the owner's consent. He was scheduled for release on June 15, 2001. The petition for his commitment as a sexually violent predator was filed by the Office on May 2, 2001. The Office argued that the person had the requisite prior convictions for sexually violent offenses and otherwise met the conditions of a predator. The Office contended that the confinement for the motor vehicle offense satisfied the Act.

The Court disagreed and held that if the State files a petition to commit an person who is presently confined, the confinement must be for the commission of a sexually violent offense at the time of the filing. Pursuant to the Court's ruling, the person was not committed for treatment and was released. Also, an additional 4 persons committed as sexually violent predators were released from treatment as a result of the Gonzales ruling.

Proposed change

This bill would amend the Act to reverse the Court's holding in Gonzales and clarify the requirements for the commitment of sexually violent predators who are currently held in confinement. The changes make clear that (1) "presently confined" means the person is confined for any public offense not just a sexually violent offense and (2) "recent overt act" includes a recent overt act committed by a person prior to confinement. While the underlying Constitutional substantive due process protections are maintained, this change allows the State to again confine individuals who fit all of the requirements for a sexually violent predator but are currently not being held on a sexually violent offense.

In addition, this bill would streamline cases where a defendant was found not guilty in the underlying of a sexually violent offense by reason of insanity. The bill requires the court in a sexually violent predator commitment trial to determine whether the sexually violent acts charged

were proven as a matter of law. If a finding that the underlying elements of the charged offense were proven, then no further fact finding is required and the case can proceed to determine whether the person should be committed as a sexually violent predator. However, if the finding of not guilty by reason of insanity did not require a finding of the underlying elements of the charged offense be proven, then the court is required to hear evidence and determine whether the person did commit the acts charged before determining whether the person should be committed as a sexually violent predator.

Child Endangerment Resulting in Death

Overview

This bill would give prosecutors the option of charging a parent, guardian or person having custody or control over a child with a class "B" felony when the death of a child results from an act of child endangerment defined under Iowa Code section 726.6(1). This change continues to be advocated by the Iowa Child Death Review Team in their past 3 annual reports.

Current law

Current Iowa law provides that when a child dies under the supervision of a caretaker under circumstances that fit the definition of child endangerment, prosecutors are left with several charging options that generally do not fit the nature of the crime. The options are the following:

1. First Degree Murder. This is a class "A" felony with a sentence of life imprisonment. If a prosecutor brings this charge, then the prosecutor is required to prove malice aforethought was present and the death occurred under circumstances manifesting an extreme indifference to human life. This charge is only available in the most extreme cases.

2. Second Degree Murder. This is a class "B" felony with a maximum sentence of 50 years in prison and requires a mandatory minimum of serving 70% of the sentence – 35 years. If a prosecutor brings a murder charge then the prosecutor is required to prove malice aforethought, which often is not present in these kinds of deaths.

3. Child Endangerment Resulting in Serious Injury. This is a class "C" felony punishable by 10 years in prison. Although this is an option for prosecutors, it may be an inadequate punishment for many of the child death cases.

4. Involuntary manslaughter. This is only a class "D" felony with a maximum of 5 years in prison

or an aggravated misdemeanor with up to 2 years in prison. This would be an inadequate punishment in most of these cases.

Note: *Voluntary manslaughter*, a class "C" felony punishable by 10 years in prison, is not an option for a prosecutor here. Voluntary manslaughter has a necessary element of "serious provocation" and the Iowa Supreme Court has held that a child cannot create circumstances which amount to serious provocation.

Also note: If the person involved had engaged in a *course of conduct* including three or more acts of child endangerment within a period of 12 months, where one or more of the acts resulted in a serious injury to a child under four years of age, the prosecutor could charge a special class "B" felony punishable by confinement for up to 50 years under Iowa Code section 726.6A.

In sum, prosecutors are stuck with a huge disparity in possible charges which makes prosecution and imposition of an appropriate penalty difficult.

Example

A mother leaves her child in the care of a babysitter. The babysitter becomes increasingly frustrated when the child won't stop crying. The babysitter shakes the child, and the child suffers extreme brain injuries and later dies. Although the babysitter harbored no ill will toward the child, the death occurred as a result of an intentional act.

In a case like this, prosecutors could pursue a murder charge, but a jury well might find that the facts do not support a finding of malice. On the other hand, prosecutors could bring a charge of child endangerment resulting in serious injury, a class "C" felony, which seems inadequate punishment for the death of a child.

Proposed change

Iowa prosecutors need another option in situations that involve the death of a child resulting from child endangerment when murder is not a viable alternative. This bill would make the death of a child resulting from an act of child endangerment a Class "B" felony punishable by up to 50 years in prison. Unlike a second degree murder charge, the Class "B" felony child endangerment would not be a mandatory minimum sentence.

This change would bring the death of a child in line with multiple acts of child endangerment described above.

Possession of Meth Precursors

Overview

This bill is necessary to allow prosecutors the ability to pursue criminal charges against individuals who possess precursor products with the intent that those precursors be used by someone else to manufacture a controlled substance.

Current law

Current law provides that it is unlawful for an individual to possess a precursor substance with the intent to use it in the production of a controlled substance. However, current law does not prohibit that individual from gathering the precursors and giving them to someone else to produce the controlled substance. This often happens in the production of methamphetamine where there is an understanding of receiving some of the meth in return.

The inadequacy of the current law was demonstrated in the case of State v. Pickerell. In that case, the defendant and a companion were observed late at night removing anhydrous ammonia from a tank into a small container that they had brought with them. The defendant told law enforcement officers that he and the companion intended to trade the anhydrous ammonia to another person in exchange for methamphetamine. The defendant was convicted of possession of a precursor with the intent to manufacture meth. The Court of Appeals reversed the conviction. The Court noted the circumstances of stealing anhydrous ammonia in the middle of the night and carrying it away in a relatively small container raised serious suspicions. However, the Court held that the suspicions were insufficient to establish intent to manufacture a controlled substance.

Proposed change

This bill would change the definition of possession of meth precursors with the intent to manufacture under Iowa Code section 124.401(4). The changes cover both individuals who obtain precursor substances and those who receive precursor substances. It allows for a conviction in cases where the individual possesses the precursor with the intent that it be used to produce a controlled substance. Similarly, it allows for a conviction when someone receives a precursor as a "middleman" with the intent that it be used in the production of a controlled substance.

Domestic Violence and Firearms

Overview

Since 1995, around 108 Iowans have been killed in domestic abuse murders, including 16 children. Of these 108 murders, 66 men, women, and children were killed by the use of a gun. This bill would make state law consistent with federal law by prohibiting persons from possessing a firearm who have been convicted of a domestic abuse assault or who are currently the subject of a pending domestic abuse no-contact order.

Current law

Under current Iowa law, only felons are prohibited from possessing firearms. Federal law provides that an individual convicted of misdemeanor domestic assault or an individual subject to a domestic violence no-contact order may not possess firearms. This inconsistency between federal law and Iowa law results in confusion and inconsistent enforcement.

Proposed change

This bill would amend Iowa Code section 724.26 to reference federal law and make it a class "D" felony for anyone to knowingly receive, possess, sell or transport a firearm or offensive weapon who:

(1) has been convicted of misdemeanor domestic violence or
(2) is currently subject to a protective order.

This bill would "square up" federal and state law, giving explicit authority to local law enforcement officers and county attorneys to prosecute violators in state district court. The bill authorizes the Court to designate a qualified person to take possession of firearms during the time period when the owner is prohibited from possessing a firearm. If the Court designates the county sheriff as the qualified person authorized to take possession, the bill also provides for a $50 fee paid to the local county sheriff where the firearm will be stored.

Federal law

Possession of a firearm after conviction of a "qualifying" domestic violence misdemeanor is a federal crime under 18 U.S.C. § 922(g)(9). A misdemeanor crime of domestic violence under federal law "qualifies" if the conviction was for an assault committed by a spouse, intimate partner, parent or guardian of the victim that involved the use or attempted use of physical force or the threatened use of a deadly weapon. In addition to domestic violence convictions, possession of a firearm while subject to a protective order is a federal crime if the protective order "qualifies" under 18 U.S.C. § 922(g)(8).

A protective order qualifies if it (1) was issued after a hearing, with notice and opportunity to appear; (2) restrains the defendant from harassing, stalking or threatening the victim; and (3) includes

a specific finding of a credible threat, or explicitly prohibits threats of physical force to cause bodily injury.

Possession of Contraband in Secured Facilities

Overview This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles.

Present law Current law provides that it is a crime to introduce contraband into jails or juvenile detention facilities, but not to possess the contraband.

State v. Mitchell (Iowa Supreme Court Case) concluded that county jails in which contraband was possessed was a "detention facility" and not a "correctional institution" and therefore the defendant's guilty plea to the offense of possessing contraband in a "correctional institution" lacked a factual basis. As a result, the defendant was entitled to have his conviction vacated and the charge dismissed.

Possession and use of contraband items within jails or juvenile detention facilities poses a serious security and safety threat.

Contraband is defined as items such as knives, razors, intoxicants, or other items which may be fashioned to cause death or injury, or items which may be used to facilitate an escape.

Proposed change

This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles.

Changes to DNA Statutes

Overview

DNA profiling is recognized around the world as one of the most effective ways to pinpoint suspects, identify victims and exonerate the innocent. DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. As technology changes, federal and state laws need to adapt. This bill makes corrective technical changes to Iowa Code section 13.10

as well as HF 2201 that was passed in 2002 which creates an "all felons" database with an effective date that is contingent on adequate funding for the Department of Public Safety (DPS). These changes are based on the DNA model act which was proposed by the United States Department of Justice. The Model Act is an attempt to make state DNA law consistent with the provisions of the DNA Identification Act of 1994 (42 U.S.C.A. §14132) and the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546) as well as current policies and procedures for participation in the National DNA Index System (NDIS). The Department of Public Safety and Department of Corrections support the change.

Current law

Since 1989, Iowa law has provided for DNA profiling as a condition of probation, parole, or work release for individuals convicted of the following offenses: (1) Murder; (2) Attempt to commit murder; (3) Kidnapping; (4) Sexual Abuse; (5) Assault with intent to commit sexual abuse; (6) Assault while participating in a felony; and (7) Burglary. See Iowa Code section 13.10. Collection of DNA did not begin until 2002 because collection was dependent on adequate funding. In 2002, HF 2201 created the authority for the DNA profiling of all felons. However, the requisite funds were not appropriated. DNA profiling of all felons will begin in Iowa when the legislature appropriates sufficient funds for DPS.

The collections of these samples are entered into a DNA database that is maintained by the DPS' Division of Criminal Investigation (DCI). Currently, DCI collects DNA samples from individuals and logs them into the state's DNA database and then forwards samples to the national Combined DNA Index System (CODIS) database. CODIS maintains DNA profiles obtained under the federal, state, and local systems in a set of databases that are available to law enforcement agencies across the country for law enforcement purposes. CODIS can compare crime scene evidence to a database of DNA profiles obtained from convicted offenders. CODIS can also link DNA evidence obtained from different crime scenes, thereby identifying serial criminals.

Proposed change

This bill provides for technical changes to HF 2201 passed in 2002. The changes, based on model DNA legislation, are as follows:

1. Codifies the Establishment of the DNA Database and Databank. Although DCI currently logs the samples into a database and stores samples in a databank, the current law refers only to DNA "profiling."

2. Creates a Procedure to Collect DNA Samples. DCI is tasked with creating uniform procedures for the collection, submission, identification, analysis and storage of DNA samples. This legislation also: (a) Limits civil liability of those taking samples; (b) Creates

authority for the use of reasonable force to obtain a sample; (c) Creates a class "D" felony for individuals who refuse to provide a sample; (d) Authorizes supervising agencies to assess fees, costs or surcharges to offenders.

3. Provides for Confidentiality Procedures and Expungement of Certain Records. Confidential DNA information may be released to local, county, state or federal agency only for official duties related to law enforcement. Expungement of DNA records is possible if the conviction or adjudication from which the sample was based has been reversed and the case dismissed.

4. Retroactivity. The changes in the bill are retroactive for qualifying offenses if individuals were convicted or adjudicated prior to the effective date and are still incarcerated or on supervised release.

5. Extension of the statute of limitations for sexual abuse when DNA identifies a suspect. This change requires that an information or indictment be filed within ten years after the commission of the crime; or if a suspect is identified by DNA, 3 years from that date.

Criminal Law Policy Positions

In addition to these criminal law legislative proposals, Attorney General Miller takes the following positions on criminal law issues:

A. Support changes proposed by the Department of Public Safety which allows for affirmative public notification of all qualified sex offenders.

B. Support full funding for the creation of the all-felons DNA database created in Iowa Code section 80.40.

C. Support the creation of the new criminal offense of invasion of privacy.